

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GARY MUSE,

Petitioner,

v.

ROBERT HOUSTON,

Respondent.

CASE NO. 4:10CV3167

MEMORANDUM
AND ORDER

Petitioner has filed a Petition for Writ of Habeas Corpus under [28 U.S.C. § 2254](#), a Motion for Leave to Proceed in forma pauperis, and a copy of his institutional trust account statement.

Habeas corpus cases attacking the legality of a person's confinement require the payment of a \$5.00 fee. [28 U.S.C. § 1914\(a\)](#). The court has reviewed the Motion for Leave to Proceed in forma pauperis pursuant to [28 U.S.C. § 1915\(a\)\(1\)-\(2\)](#). (The court recognizes that the provisions of [28 U.S.C. § 1915\(b\)](#) do not apply to habeas cases. See [Malave v. Hedrick, 271 F.3d 1139, 1139-40 \(8th Cir. 2001\)](#).) Because Petitioner's trust account statement shows that Petitioner had an average monthly balance of \$100 or more in Petitioner's account for the six-month period immediately preceding the filing of the Petition, the court concludes that Petitioner must be required to pay the \$5.00 filing fee because Petitioner has the financial ability to do so. See [28 U.S.C. § 1915\(a\)](#).

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Leave to Proceed in forma pauperis (Filing No. [2](#)) is denied;
2. Petitioner shall have until September 27, 2010, to pay the \$5.00 filing fee. Petitioner is warned that if the fee is not paid as required, the court may dismiss this case without further notice;

3. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: September 27, 2010: deadline for Petitioner to pay \$5.00 filing fee; and
4. No further review of this case will take place until the filing fee is paid.

DATED this 27th day of August, 2010.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge

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